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No. 86-1367

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

A. ADAM, *et al.*,
Petitioners,

v.

BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND CANADA; TRANSPORT WORKERS UNION OF AMERICA; AND CONSOLIDATED RAIL CORPORATION, INC.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF OF RESPONDENT BROTHERHOOD RAILWAY CARMEN IN OPPOSITION

ERICK J. GENSER
MULHOLLAND & HICKEY
1125 15th Street, N.W.
Washington, D.C. 20005
Suite 400
(202) 833-8855
Counsel for Respondent Brotherhood Railway Carmen

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Respondent Brotherhood Railway Carmen of the United States and Canada (hereinafter referred to as "BRC") respectfully prays that this Court deny the Petition for a Writ of Certiorari filed in this case seeking review of the Second Circuit's decision insofar as it affirmed the District Court's entry of summary judgment in favor of all respondents.

COUNTERSTATEMENT OF THE CASE[1]

1. Statement of Facts

Petitioners are 44 individuals who were at one time employed by the Erie Lackawanna Railroad ("E-L") within the carmen craft. While employed by the E-L, Petitioners were represented for collective bargaining purposes by BRC. Pursuant to the Regional Rail Reorganization Act of 1973 ("3-R Act"), 45 U.S.C. § 701 *et seq.*, the E-L was reorganized along with seven other bankrupt railroads in the northeast and midwest regions of the country to form Consolidated Rail Corp. ("Conrail"). Conrail began operations on April 1, 1976 and in accordance with the 3-R Act, Petitioners were offered and accepted employment with the new carrier.

The Penn Central Railroad ("PC") was included among the carriers that were combined into Conrail. During the time the PC operated as a separate entity, respondent Transport Workers Union ("TWU") was the exclusive bargaining representative of employees within the carmen craft employed by PC. Pet. App. 7a.

Subsequent to the passage of the 3-R Act, BRC and TWU agreed to form a "Joint Council" and bargain as a single entity for all carmen who were to become employees of Conrail. Pet. App. 7a. BRC, TWU and Conrail thereafter conducted several rounds of negotiations

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[1] The opinions below, jurisdiction, and statutory provisions involved are set forth at p. 2 of the Petition. An error in these preliminary matters should be noted. That is, contrary to the assertion of Petitioners, this case does not involve § 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, but instead involves a cause of action implied from the Railway Labor Act, 45 U.S.C. § 151 *et seq.* ("RLA"). All parties herein are subject to the RLA. Disputes between employers, employees and labor organizations that are subject to the RLA are exempt from coverage under the Labor Management Relations Act. *See*, 29 U.S.C. § 152(2), (3); *Brotherhood of Railway Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969).

as directed by the 3-R Act and entered into a series of collective bargaining agreements establishing the procedures for offering employment to affected carmen as well as the rates of pay, rules and working conditions for those carmen who eventually accepted employment with Conrail.

One of those agreements, entered into on December 5, 1975, established the seniority rights of the Conrail carmen. Among other things, this agreement established a system of prior seniority rights ("prior rights") in which an employee was guaranteed the right to perform carmen work at his pre-Conrail location (so long as work was assigned there) over employees from other locations, regardless that the latter employees may have greater railroad seniority with either the same or another predecessor railroad. Pet. App. 8a.

The seniority rights conferred on the employees of the bankrupt railroads by the Prior Rights Agreement of December 5, 1975 were adopted in toto from the agreements which applied to those employees at that time; that is, the seniority rights which each employee had under his agreement with his railroad employer (pre-Conrail) were preserved to him by the transfer of those rights to the December 5, 1975 Agreement. In this respect, the agreement followed the common, normal practice in the railroad industry for combining seniority rosters. Pet. App. 8a.

Over a period of time after it assumed the properties of the bankrupt railroads in 1976, Conrail closed down several railroad yards in the Buffalo area. The former E-L yards in which Petitioners worked were all eventually closed. At the same time, many (though not all) of the PC yards were kept open. Pet. App. 6a.

The decision to close the various yards was made by Conrail management, primarily in the office of David Connelly, then the Assistant Superintendent for Conrail's

Buffalo division. Connelly's determinations were based on economic considerations. In all cases, the decision to close a particular yard was solely that of railroad management. No negotiations or consultations were conducted with any of the unions representing Conrail prior to the decision being made. Neither BRC nor TWU had any input in determining which yards would be closed and which would be kept open. Pet. App. 9a.

When a particular yard was closed, the affected carmen could not, generally speaking, exercise their district seniority and bump junior carmen (i.e., carmen lower on the district seniority roster) in other yards in the Buffalo area. Instead, they were forced to go on furlough. This inability to bump resulted from the application of the prior rights provision in the December 5, 1975 Prior Rights Agreement. Prior to 1981, however, those employees who were placed on furlough suffered no financial harm. Title V of the 3-R Act provided that employees of the pre-Conrail bankrupt carriers would continue to receive their full salary in the event they were deprived of their employment on or after the formation of Conrail. 45 U.S.C. § 775 (1976). Pet. App. 6a-7a.

In August 1981, Congress enacted legislation known as the Northeast Rail Service Act ("NRSA") (Pub. L. 97-35, 95 Stat. 644) which amended various provisions of the 3-R Act. Specifically, a new Title VII dealing with employee protection replaced Title V of the 3-R Act. Congress found that the guarantee of full salary until age 65 to employees deprived of employment had become too costly. (45 U.S.C. § 1101(4)). Therefore, the new Title VII provided that a furloughed Conrail employee could collect his statutory unemployment benefits plus $42.00 per day, up to a maximum of $20,000. When a furloughed employee reached the monetary cap, he would no longer be eligible for benefits. (45 U.S.C. § 797(a), (d)). Pet. App. 7a.

About the time that NRSA was passed and the benefit scheme for furloughed Conrail employees modified, employees who had been or were about to be laid off began contacting various BRC officials demanding that the December 1975 Prior Rights Agreement be renegotiated. They sought to eliminate prior right seniority which in turn would allow them to displace junior employees in the former PC yards that remained open. Employees also contacted officials of TWU and Conrail with the same demand. Pet. App. 9a.

BRC and TWU both declined to renegotiate the Prior Rights Agreement. From BRC's perspective, the seniority arrangements in the Prior Rights Agreement were negotiated independently of the wage protections contained in Title V of the 3-R Act. Therefore, the repeal of Title V by NRSA in 1981 did not, in BRC's view, have any impact on the wisdom or propriety of the seniority arrangements set forth in the agreement. It was BRC's position that the seniority arrangement established in the Prior Rights Agreement was a fair and equitable system, applying equally to all Conrail carmen. The agreement preserved to each employee the exact seniority rights he/she held on the predecessor railroads and was consistent with the long established custom and practice in the industry. This position taken by BRC officials was expressly communicated to Petitioners (both orally and in writing) each time they demanded that the prior Rights Agreement be altered. Pet. App. 9a-10a.

2. The Proceedings Below

Petitioners commenced this action on May 31, 1983 in the United States District Court for the Western District of New York. Petitioners alleged that the refusal by Respondents BRC and TWU to renegotiate the Prior Rights Agreement constituted a breach of the labor organizations' duty of fair representation. Petitioners further alleged that all Respondents (including Conrail)

conspired with one another to systematically close the former Erie Lackawanna yards at which Petitioners (i.e., BRC members) worked and to maintain the former Penn Central yards at which TWU members worked.

After the close of discovery, Respondents each moved for summary judgment. Upon reviewing all materials filed both in support of and in opposition to the motions, the District Court granted Respondents' motions. The District Court, per Curtain, J., determined that there was no genuine issue of material facts, and that based on the undisputed facts, "BRC was under no obligation to renegotiate the prior rights agreement." Pet. App. 14a. At the same time, "the TWU owed no obligation to Petitioners in this case." *Id.* As to the conspiracy claim, Judge Curtain stated that "[f]rom a review of all the materials, it appears without question that the decision to close the yards was made by Conrail management, and there is no evidence whatsoever of a conspiracy by the [Respondents] in this case directed at the [Petitioners]." Pet. App. 15a.

On appeal, the Second Circuit affirmed. Employing the proper standard when asked to review a summary judgment order (i.e., viewing the evidence in a light most favorable to appellants), the Second Circuit agreed with each conclusion reached by the District Court. Pet. App. 3a.

REASONS FOR DENYING THE WRIT

It is readily apparent from the opinions of the lower courts that this case does not present any issues of general importance to the field of labor-management relations. No questions of constitutional dimension are involved. Nor did the opinions below address novel issues of statutory interpretation or procedural law. Petitioners' primary allegations against Respondent unions present a typical duty of fair representation claim that called for the judicial application of well-established precedent to the unique facts presented by the Complaint.

As such, the lower courts' opinions have extremely limited application to other employees and their relationship with their unions.

Petitioners' expressed reasons for granting the writ are spurious. They first state that "there exists an important question of Federal Law which has not been but should be, settled by this Court." Pet. 6. However, Petitioners never go on to indicate what that unsettled question of law is; undoubtedly because there is no such unsettled question that is present in this case. The standards by which the courts are to determine whether a union fulfilled its duty of fair representation to its members have been firmly established for some time now. *E.g., Vaca v. Sipes*, 386 U.S. 171 (1967).

Apparently recognizing the infirmity in this argument, Petitioners quickly switch gears. They assert that the question of adequacy of a union's representation is a "question of fact to be determined only after all available evidence has been presented to a jury." Pet. 6. The apparent suggestion that fair representation cases may never be disposed of on motions for summary judgment finds no support in the case law. To the contrary, this Court has recently stated that in civil cases generally, a summary judgment motion "may, and should, be granted so long as whatever is before the district court demonstrates that the standard for the entry of summary judgment, as set forth in Rule 56(c), is satisfied." *Celotex Corp. v. Catrett*, 477 U. S. ——, 91 L.Ed.2d 265, 274 (1986). In other words, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Matshushita Electric Ind. Co. v. Zenith Radio Corp.*, 475 U.S. ——, 89 L.Ed.2d 538, 552 (1986), quoting *First National Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 289 (1968).

Petitioners next assert that there exists genuine issues of material fact concerning the adequacy of Respondent

BRC's representation which should have been presented to a jury. In the District Court, BRC supported its summary judgment motion with extensive deposition testimony and affidavits, and thereby carried its burden of demonstrating that there was *no* genuine issue of fact. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. ——, 91 L.Ed. 2d 202 (1986). In their opposition papers, Petitioners merely asserted, as they do now, that genuine factual issues exist—without ever specifying exactly what those issues are. Conclusory assertions of this sort are insufficient to defeat a motion for summary judgment. Petitioners are obviously unaware of this Court's recent pronouncement that

> When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts. In the language of the Rule, the non-moving party must come forward with "specific facts showing that there is a *genuine issue* for trial." (citations omitted).

Matsushita Electric Ind. Co., supra, 475 U.S. at ——, 89 L.Ed. at 552. Petitioners have not mentioned *even one* fact in their petition that arguably creates a genuine issue.[2]

Petitioners' final contention—that a conspiracy claim can only properly be determined by presenting all evidence to a jury—suffers from the same deficiency as their argument that fair representation claims must al-

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[2] There was no disagreement over the fact that BRC declined to renegotiate the Prior Rights Agreement when requested to do so by Petitioners. This much was conceded. Further, there was no dispute over the reasons why BRC chose not to renegotiate. See p. 5, *supra*. Thus, the evidence simply did *not* present "a sufficient disagreement to require submission to a jury." *Anderson, supra*, 477 U.S. at ——; 91 L.Ed.2d at 214. The District Court and the Second Circuit both concluded that the evidence was "so one-sided that [BRC and the other Respondents] must prevail as a matter of law." *Id.*

ways go to a jury: it is contrary to the teachings of this Court. The Court held nearly twenty years ago that when faced with a properly supported summary judgment motion, the non-moving party may not rest on his allegations of a conspiracy to get to a jury without "any significant probative evidence tending to support the complaint." *First National Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 290 (1968). The passage of time has served only to reinforce this principle. *See Anderson, supra*, 477 U.S. at ——, 91 L.Ed.2d at 216-217. Thus, when the record revealed that "there [was] absolutely no evidence whatsoever of a conspiracy by the defendants in this case directed at the plaintiffs," Pet. App. 15a, it would have been gross error had the District Court not granted Respondents summary judgment.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

ERICK J. GENSER
MULHOLLAND & HICKEY
1125 15th Street, N.W.
Washington, D.C. 20005
Suite 400
(202) 833-8855
Counsel for Respondent
Brotherhood Railway Carmen